

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

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JENNIFER SHEPPARD,

1:19-cv-18206-NLH

Plaintiff,

**OPINION**

v.

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

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**APPEARANCES:**

ROBERT ANTHONY PETRUZZELLI  
LAUREN S. TOVINSKY  
JACOBS, SCHWALBE & PETRUZZELLI, PC  
WOODCREST PAVILION  
TEN MELROSE AVENUE  
SUITE 340  
CHERRY HILL, NJ 08003

*On behalf of Plaintiff*

DAVID LANCE LEACH  
DAVID E. SOMERS, III  
SOCIAL SECURITY ADMINISTRATION  
300 SPRING GARDEN ST  
6TH FLOOR  
PHILADELPHIA, PA 19123

*On behalf of Defendant*

**HILLMAN**, District Judge

This matter comes before the Court pursuant to Section 205(g) of the Social Security Act, as amended, 42 U.S.C. §

405(g), regarding Plaintiff's application for Disability Insurance Benefits ("DIB")<sup>1</sup> under Title II of the Social Security Act. 42 U.S.C. § 423, et seq. The issue before the Court is whether the Administrative Law Judge ("ALJ") erred in finding that there was "substantial evidence" that Plaintiff was not disabled at any time since her alleged onset date of disability, March 28, 2016. For the reasons stated below, this Court will affirm that decision.

#### **I. BACKGROUND AND PROCEDURAL HISTORY**

On May 5, 2016, Plaintiff, Jennifer Sheppard,<sup>2</sup> protectively filed an application for DIB,<sup>3</sup> alleging that she became disabled on March 28, 2016. Plaintiff claims that she can no longer work as a medical assistant because of her migraine headaches, fibromyalgia, and fatigue disorder, among

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<sup>1</sup> DIB is a program under the Social Security Act to provide disability benefits when a claimant with a sufficient number of quarters of insured employment has suffered such a mental or physical impairment that the claimant cannot perform substantial gainful employment for at least twelve months. 42 U.S.C. § 423 et seq.

<sup>2</sup> Plaintiff was 40 years old at her alleged disability onset date. Under the regulations, Plaintiff was defined as a "younger individual" (age 18-49). 20 C.F.R. § 404.1563.

<sup>3</sup> A protective filing date marks the time when a disability applicant makes a written statement of his or her intent to file for benefits. That date may be earlier than the date of the formal application and may provide additional benefits to the claimant. See SSA Handbook 1507; SSR 72-8.

other impairments.

After Plaintiff's claim was denied initially and upon reconsideration, Plaintiff requested a hearing before an ALJ, which was held on July 19, 2018. On November 7, 2018, the ALJ issued an unfavorable decision. Plaintiff's Request for Review of Hearing Decision was denied by the Appeals Council on September 9, 2019, making the ALJ's decision final. Plaintiff brings this civil action for review of the Commissioner's decision.

## **II. DISCUSSION**

### **A. Standard of Review**

Under 42 U.S.C. § 405(g), Congress provided for judicial review of the Commissioner's decision to deny a complainant's application for social security benefits. Ventura v. Shalala, 55 F.3d 900, 901 (3d Cir. 1995). A reviewing court must uphold the Commissioner's factual decisions where they are supported by "substantial evidence." 42 U.S.C. §§ 405(g), 1383(c)(3); Fargnoli v. Massanari, 247 F.3d 34, 38 (3d Cir. 2001); Sykes v. Apfel, 228 F.3d 259, 262 (3d Cir. 2000); Williams v. Sullivan, 970 F.2d 1178, 1182 (3d Cir. 1992). Substantial evidence means more than "a mere scintilla." Richardson v. Perales, 402 U.S. 389, 401 (1971) (quoting Consolidated Edison Co. v. NLRB, 305 U.S. 197, 229 (1938)).

It means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Id. The inquiry is not whether the reviewing court would have made the same determination, but whether the Commissioner's conclusion was reasonable. See Brown v. Bowen, 845 F.2d 1211, 1213 (3d Cir. 1988).

A reviewing court has a duty to review the evidence in its totality. See Daring v. Heckler, 727 F.2d 64, 70 (3d Cir. 1984). "[A] court must 'take into account whatever in the record fairly detracts from its weight.'" Schonewolf v. Callahan, 972 F. Supp. 277, 284 (D.N.J. 1997) (quoting Willbanks v. Secretary of Health & Human Servs., 847 F.2d 301, 303 (6th Cir. 1988) (quoting Universal Camera Corp. v. NLRB, 340 U.S. 474, 488 (1951)).

The Commissioner "must adequately explain in the record his reasons for rejecting or discrediting competent evidence." Ogden v. Bowen, 677 F. Supp. 273, 278 (M.D. Pa. 1987) (citing Brewster v. Heckler, 786 F.2d 581 (3d Cir. 1986)). The Third Circuit has held that an "ALJ must review all pertinent medical evidence and explain his conciliations and rejections." Burnett v. Comm'r of Soc. Sec. Admin., 220 F.3d 112, 122 (3d Cir. 2000). Similarly, an ALJ must also consider and weigh all of the non-medical evidence before him. Id.

(citing Van Horn v. Schweiker, 717 F.2d 871, 873 (3d Cir. 1983)); Cotter v. Harris, 642 F.2d 700, 707 (3d Cir. 1981).

The Third Circuit has held that access to the Commissioner's reasoning is indeed essential to a meaningful court review:

Unless the [Commissioner] has analyzed all evidence and has sufficiently explained the weight he has given to obviously probative exhibits, to say that his decision is supported by substantial evidence approaches an abdication of the court's duty to scrutinize the record as a whole to determine whether the conclusions reached are rational.

Gober v. Matthews, 574 F.2d 772, 776 (3d Cir. 1978). Although an ALJ, as the fact finder, must consider and evaluate the medical evidence presented, Fargnoli, 247 F.3d at 42, "[t]here is no requirement that the ALJ discuss in its opinion every tidbit of evidence included in the record," Hur v. Barnhart, 94 F. App'x 130, 133 (3d Cir. 2004). In terms of judicial review, a district court is not "empowered to weigh the evidence or substitute its conclusions for those of the fact-finder." Williams, 970 F.2d at 1182. However, apart from the substantial evidence inquiry, a reviewing court is entitled to satisfy itself that the Commissioner arrived at his decision by application of the proper legal standards. Sykes, 228 F.3d at 262; Friedberg v. Schweiker, 721 F.2d 445, 447 (3d Cir.

1983); Curtin v. Harris, 508 F. Supp. 791, 793 (D.N.J. 1981).

**B. Standard for DIB**

The Social Security Act defines "disability" for purposes of an entitlement to a period of disability and disability insurance benefits as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted or can be expected to last for a continuous period of not less than 12 months. See 42 U.S.C. § 1382c(a)(3)(A). Under this definition, a Plaintiff qualifies as disabled only if her physical or mental impairments are of such severity that she is not only unable to perform her past relevant work, but cannot, given her age, education, and work experience, engage in any other type of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which she lives, or whether a specific job vacancy exists for her, or whether she would be hired if she applied for work. 42 U.S.C. § 1382c(a)(3)(B) (emphasis added).

The Commissioner has promulgated regulations<sup>4</sup> for

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<sup>4</sup> The regulations were amended effective March 27, 2017. See 82 F.R. 5844. The parties do not indicate that any of the amendments are applicable to the issues presented by

determining disability that require application of a five-step sequential analysis. See 20 C.F.R. § 404.1520. This five-step process is summarized as follows:

1. If the claimant currently is engaged in substantial gainful employment, she will be found "not disabled."
2. If the claimant does not suffer from a "severe impairment," she will be found "not disabled."
3. If the severe impairment meets or equals a listed impairment in 20 C.F.R. Part 404, Subpart P, Appendix 1 and has lasted or is expected to last for a continuous period of at least twelve months, the claimant will be found "disabled."
4. If the claimant can still perform work she has done in the past ("past relevant work") despite the severe impairment, she will be found "not disabled."
5. Finally, the Commissioner will consider the claimant's ability to perform work ("residual functional capacity"), age, education, and past work experience to determine whether or not she is capable of performing other work which exists in the national economy. If she is incapable, she will be found "disabled." If she is capable, she will be found "not disabled."

20 C.F.R. § 404.1520(b)-(f). Entitlement to benefits is therefore dependent upon a finding that the claimant is incapable of performing work in the national economy.

This five-step process involves a shifting burden of proof. See Wallace v. Secretary of Health & Human Servs., 722 F.2d 1150, 1153 (3d Cir. 1983). In the first four steps of

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Plaintiff's appeal.

the analysis, the burden is on the claimant to prove every element of her claim by a preponderance of the evidence. See id. In the final step, the Commissioner bears the burden of proving that work is available for the Plaintiff: "Once a claimant has proved that he is unable to perform his former job, the burden shifts to the Commissioner to prove that there is some other kind of substantial gainful employment he is able to perform." Kangas v. Bowen, 823 F.2d 775, 777 (3d Cir. 1987); see Olsen v. Schweiker, 703 F.2d 751, 753 (3d Cir. 1983).

### C. Analysis

At step one, the ALJ found that Plaintiff had not engaged in substantial gainful activity since the alleged onset of disability. At step two, the ALJ found that Plaintiff's impairments of fibromyalgia, migraines, fatigue, anemia, thyroid nodules, and carpal tunnel syndrome post release were severe. At step three, the ALJ determined that Plaintiff's severe impairments or her severe impairments in combination with her other impairments did not equal the severity of one of the listed impairments. At step four, the ALJ determined that Plaintiff had the residual functional capacity ("RFC") to perform skilled work at the light exertional level with

certain restrictions,<sup>5</sup> and she was able to perform her past relevant work as a medical assistant.<sup>6</sup>

Plaintiff presents several issues on appeal that challenge the ALJ's determination of Plaintiff's RFC. Plaintiff argues that the ALJ erred by not providing a function-by-function analysis of Plaintiff's non-exertional impairments resulting from her migraines and fatigue disorder, and how those limitations impacted her RFC. Plaintiff also argues that the ALJ improperly considered the medical evidence, particularly the evidence of her treating neurologist.

A claimant's RFC reflects "what [the claimant] can still do despite [his or her] limitations," 20 C.F.R. § 416.945(a), and the controlling regulations are clear that the RFC finding

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<sup>5</sup> 20 C.F.R. § 404.1568 ("In order to evaluate your skills and to help determine the existence in the national economy of work you are able to do, occupations are classified as unskilled, semi-skilled, and skilled."); 20 C.F.R. § 404.1567 ("Physical exertion requirements. To determine the physical exertion requirements of work in the national economy, we classify jobs as sedentary, light, medium, heavy, and very heavy.").

<sup>6</sup> Because the ALJ concluded that Plaintiff was capable of performing her past relevant work, the ALJ did not address step five of the sequential step analysis. Benjamin v. Commissioner of Social Security, 2019 WL 351897, at \*4 n.9 (D.N.J. 2019) (citing Valenti v. Commissioner of Social Sec., 373 F. App'x 255, 258 n.1 (3d Cir. 2010); 20 C.F.R. § 404.1520(b)-(f)).

is a determination expressly reserved to the Commissioner, and not any medical source, 20 C.F.R. §§ 404.1527(d)(2), 416.927(d)(2), 404.1546(c), 416.946(c).

When making the RFC determination, the ALJ is required to:

[C]onsider all your symptoms, including pain, and the extent to which your symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence. By objective medical evidence, we mean medical signs and laboratory findings . . . . By other evidence, we mean . . . statements or reports from you, your treating or nontreating source, and others about your medical history, diagnosis, prescribed treatment, daily activities, efforts to work, and any other evidence showing how your impairment(s) and any related symptoms affect your ability to work. . . .

20 C.F.R. § 404.1529.

Additionally, the RFC assessment takes into consideration all of a claimant's medically determinable impairments in combination, including those that the ALJ has found to be severe, as well as those that are not deemed to be severe at step two. See 20 C.F.R. § 404.1545(a)(2) ("We will consider all of your medically determinable impairments of which we are aware, including your medically determinable impairments that are not 'severe,' as explained in §§ 404.1520(c), 404.1521, and 404.1523, when we assess your residual functional capacity.").

Here, the ALJ found Plaintiff's RFC to be as follows:

After careful consideration of the entire record, the undersigned finds that the claimant has the residual functional capacity to perform light work as defined in 20 CFR 404.1567(b) except she would require proximity to the bathroom; could have no exposure to workplace hazards such as moving machinery and unprotected heights; and could perform frequent fingering and handling.

(R. at 16.)

As a result of this RFC, the ALJ determined that Plaintiff was capable of performing her prior job as a medical assistant, because that job is classified as light work and the physical and mental demands of that job matched Plaintiff's RFC. (R. at 19.)

Plaintiff argues that the ALJ erred in her RFC determination by not specifically addressing the non-exertional capacity functions which are impacted by Plaintiff's migraines and fatigue disorder in violation of SSR 96-8p. SSR 96-8p provides, "Nonexertional capacity considers all work-related limitations and restrictions that do not depend on an individual's physical strength; i.e., all physical limitations and restrictions that are not reflected in the seven strength demands, and mental limitations and restrictions."<sup>7</sup> "[N]onexertional capacity must be expressed in

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<sup>7</sup> "Exertional capacity addresses an individual's limitations and restrictions of physical strength and defines the individual's remaining abilities to perform each of seven strength demands: Sitting, standing, walking, lifting, carrying, pushing, and pulling. Each function must be

terms of work-related functions," and the "[w]ork-related mental activities generally required by competitive, remunerative work include the abilities to: [1] understand, carry out, and remember instructions; [2] use judgment in making work-related decisions; [3] respond appropriately to supervision, co-workers and work situations; and [4] deal with changes in a routine work setting."

Plaintiff argues that the ALJ did not address these four capacities, specifically and in combination with her other exertional limitations resulting from her migraines and fatigue disorder, which constitutes reversible error.<sup>8</sup> The

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considered separately (e.g., 'the individual can walk for 5 out of 8 hours and stand for 6 out of 8 hours'), even if the final RFC assessment will combine activities (e.g., 'walk/stand, lift/carry, push/pull')." SSR 96-8p.

<sup>8</sup> Plaintiff argues that the ALJ violated SSR 96-8p, but she references "significant limitations in concentration, remaining on task, and keeping persistence and pace." (Docket No. 9 at 17.) These terms are typically associated with the assessment of whether a claimant's mental disorder meets the listing of impairments at step three. See Diciano v. Commissioner of Social Security, 2019 WL 6696523, at \*7

(D.N.J. 2019) (explaining that at step three, an ALJ must consider whether a claimant's severe impairment meets or equals a listed impairment in Appendix 1 to Subpart P of Part 404 - Listing of Impairments, 12.00 Mental Disorders, and part of that assessment is determining whether a claimant's mental disorder results in extreme limitation of one, or marked limitation of two, paragraph B areas of mental functioning, which include: (1) understand, remember, or apply information; (2) interact with others; (3) concentrate, persist, or maintain pace; and (4) adapt or manage oneself.") Plaintiff here does not claim she has a mental impairment.

Court does not agree. The RFC is a function-by-function assessment based on all of the relevant evidence of an individual's ability to do work-related activities, but an ALJ does not need to use particular language or adhere to a particular format in conducting her RFC analysis. Ungemach v. Commissioner of Social Security, 2019 WL 3024858, at \*4 (D.N.J. 2019) (citing Jones v. Barnhart, 364 F.3d 501, 505 (3d Cir. 2004)). SSR 96-8p requires that each function "must be considered," but it does not require every function to be specifically delineated in the RFC. Indeed, SSR 96-8p contemplates that in her "final RFC assessment," an ALJ may assess the functions in combination rather than individually.

Here, the RFC did not specifically reference the four non-exertional functions, but that does not mean the ALJ did not consider those functions, singularly or in combination with Plaintiff's other limitations from her various impairments. This is because implicit in the finding that Plaintiff is capable of performing her past relevant work as a medical assistant is that all of Plaintiff's limitations in those areas have been considered and accounted for by the limitation to light work and a job which matches Plaintiff's physical and mental capacities.<sup>9</sup> The ALJ did not err in her

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<sup>9</sup> A medical assistant is DOT Code 079.362-010, which has a

articulation of Plaintiff's RFC by not individually referencing each non-exertional limitation.<sup>10</sup>

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specific vocational preparation ("SVP") of 6. "The DOT lists a specific vocational preparation (SVP) time for each described occupation. Using the skill level definitions in 20 C.F.R. § 404.1568, unskilled work corresponds to an SVP of 1-2; semi-skilled work corresponds to an SVP of 3-4; and skilled work corresponds to an SVP of 5-9 in the DOT." Thomas v. Commissioner of Social Security, 2019 WL 3562691, at \*7 (D.N.J. 2019). "A skill is knowledge of a work activity which requires the exercise of significant judgment that goes beyond the carrying out of simple job duties and is acquired through performance of an occupation which is above the unskilled level (requires more than 30 days to learn). . . . Skilled occupations are more complex and varied than unskilled and semiskilled occupations. They require more training time and often a higher educational attainment." SSR 82-41.

<sup>10</sup> See, e.g., Malcolm v. Commissioner of Social Security, 2017 WL 5951703, at \*19 (D.N.J. 2017) (noting "where, as here, the ALJ's RFC determination is supported by substantial evidence, and is "accompanied by a clear and satisfactory explication of the basis on which it rests," Fargnoli v. Massanari, 247 F.3d 34, 41 (3d Cir. 2001), the Third Circuit does not require strict adherence to the function-by-function analysis set forth in Social Security Ruling 96-8p") (citing Chiaradio v. Comm'r of Soc. Sec., 425 F. App'x 158, 161 (3d Cir. 2011) (affirming the ALJ's RFC determination, despite the fact that "the ALJ did not make a task by task analysis," where the ALJ's RFC finding was supported by substantial evidence in the record, and the ALJ's "overall review carefully considered [the claimant's] past relevant work and the ALJ assessed what [the claimant] could reasonably do."); Garrett v. Comm'r of Soc. Sec., 274 F. App'x 159, 164 (3d Cir. 2008) (affirming the ALJ's RFC determination, despite the ALJ's failure to perform the precise function-by-function assessment outlined in SSR 96-8p, where the ALJ questioned the claimant about the physical limitations of her prior work, and substantial evidence supported the ALJ's findings); Bencivengo v. Comm'r of Soc. Sec., 251 F.3d 153, No. 00-1995, slip op. at 4 (3d Cir. Dec. 19, 2000) ("Although a function-by-function analysis is desirable, SSR 96-8p does not require ALJs to produce such a detailed statement in writing.")).

A more substantive challenge to the ALJ's RFC determination is Plaintiff's contention that the ALJ's finding that Plaintiff could perform her past work as a medical assistant is not supported by substantial evidence - namely, that the ALJ did not fully consider the limitations caused by Plaintiff's migraines and fatigue disorder, as well as the records and opinions of her treating neurologist.

Plaintiff began treatment with Dr. Janoff, a neurologist, in 2006 for her migraines. Plaintiff argues that the ALJ erred because when the ALJ afforded Dr. Janoff's opinions "some weight," she did not articulate which parts of his opinion she credited and which parts she rejected. Plaintiff further argues that the opinions of Dr. Janoff, as Plaintiff's long-time treating physician, should have been afforded "great weight." Plaintiff also argues that the ALJ's reliance on treatment notes from 2014, which predate her alleged disability onset date by two years, to support the RFC assessment is in error because the treatment notes more contemporaneous with her alleged onset date show more significant limitations. Plaintiff finally argues that the ALJ erred in considering Plaintiff's testimony regarding the limitations caused by her migraines and fatigue disorder in the RFC analysis.

The Court does not find that the ALJ erred in any of the ways argued by Plaintiff. First, the ALJ properly explained why she afforded "some weight" to Dr. Janoff's opinion, and she specified which part of his opinion she afforded that weight.<sup>11</sup> (See R. at 17, "The claimant's treating neurologist Dr. Janoff's opinion that the claimant is unable to concentrate, that she would miss 4 or more days of work per week, and that she could not perform any work at any level of skill or exertion (Exhibit 27F) is given some weight insofar as it supports a finding of severe headaches symptoms; however, his records do not support such significant limitations.")

At the same time, and by virtue of affording Dr. Janoff's opinion "some weight," the ALJ properly explained why she did not afford Dr. Janoff's opinion "great weight." A "cardinal principle guiding disability eligibility determinations is that the ALJ accord treating physicians' reports great weight, especially when their opinions reflect expert judgment based on a continuing observation of the patient's condition over a prolonged period of time," Morales v. Apfel, 225 F.3d 310, 317 (3d Cir. 2000) (citations and quotations omitted), but an ALJ

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<sup>11</sup> An ALJ is required to state what weight she ascribes to a medical opinion, but not to other forms of medical evidence. 20 C.F.R. §§ 404.1527(c), 416.927(c).

may reduce her reliance upon a treating physician's opinions if those opinions are inconsistent with other medical evidence, and if she explains her reasoning, Plummer v. Apfel, 186 F.3d 422, 439 (3d Cir. 1999) ("[A]n ALJ is permitted to accept or reject all or part of any medical source's opinion, as long as the ALJ supports his assessment with substantial evidence."), cited by Brownawell v. Commissioner, 554 F.3d 352, 355 (3d Cir. 2008)); Cotter v. Harris, 642 F.2d 700, 705 (3d Cir. 1981) ("We are also cognizant that when the medical testimony or conclusions are conflicting, the ALJ is not only entitled but required to choose between them.... [W]e need from the ALJ not only an expression of the evidence s/he considered which supports the result, but also some indication of the evidence which was rejected.").

The ALJ's assessment of Dr. Janoff's opinion is supported by the ALJ's articulation of Plaintiff's activities of daily living. The ALJ explained,

In her Activities of Daily Living form dated May 15, 2016, the claimant reported that she spends her days getting her daughter ready and taking her to school or camp. She plays with her daughter and assists with homework and doing her hair. She is able to do light kitchen and house cleaning, including folding laundry, with breaks. She sometimes cannot get comfortable to sleep but has no problems with self-care. She socializes with family and friends, and gets along with authority figures. She travels independently to the mall or nail salon. She states she can only walk for 5 minutes, but also states she goes food shopping for 2-3 hours at a

time. She can follow instructions and handle changes in routine as needed (Exhibit 3E). The claimant stated in her application for disability benefits for Primerica that, despite her impairments, she is able to take care of her child, help with homework, prepare meals, do grocery shopping, and do light housework as much as she can. The claimant has frequent diarrhea and headaches. She is also diagnosed with narcolepsy and falls asleep easily (Exhibit 2F).

(R. at 17.)

The ALJ further explained that Plaintiff's "testimony and statements demonstrate that her activities are more extensive and her capabilities are greater than would be expected of one who is alleging totally disabling impairments and limitations. Further, a review of the medical evidence demonstrates that the claimant's allegations as to the extent of her impairments and limitations are not fully consistent with the evidence, and the record does not support her allegation that her ability to function is so impaired as to render her totally disabled or unable to perform any substantial gainful activity." (R. at 17.) The ALJ further noted that Plaintiff "has generally had neurological exams with no objective findings aside from 'multiple areas of sensitivity to pressure' which 'may be consistent with her fibromyalgia diagnosis'." (Id.) This analysis satisfies the ALJ's duty under Cotter, Plummer, and their progeny. See also Biestek v. Berryhill, 139 S. Ct. 1148, 1154 (U.S. 2019) (reiterating that

the threshold for evidentiary sufficiency under the substantial evidence standard is not high, and it "means - and means only - such relevant evidence as a reasonable mind might accept as adequate to support a conclusion").

Finally, with regard to the ALJ's reference to Dr. Janoff's treatment records from 2014, the ALJ stated, "as of May 2014, her headache pain was responsive to Topamax, ibuprofen, and Imitrex (Exhibit 16F page 4)." (R. at 17.) Plaintiff challenges the ALJ's reference to treatment notes that predate her alleged disability onset date by two years, and Plaintiff contends that the ALJ misinterprets them.

The Court's independent review of Dr. Janoff's treatment notes shows that Plaintiff's last treatment with Dr. Janoff was on May 22, 2014, until she returned for one additional visit on June 3, 2016.<sup>12</sup> (R. at 368.) There are no other records from Dr. Janoff, except for his completion of a headache questionnaire on June 3, 2016.<sup>13</sup> Plaintiff's alleged disability onset date is March 28, 2016. Thus, the ALJ cannot

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<sup>12</sup> Plaintiff filed her DIB application on May 4, 2016. (R. at 12.)

<sup>13</sup> Dr. Janoff's June 3, 2016 treatment note relates that he completed a headache evaluation at the request of Plaintiff's attorneys. (R. at 370.) Dr. Janoff did not answer the question regarding exertional limitations or the question regarding Plaintiff's tolerance for work stress. (R. at 630.)

be faulted for referring to the most recent medical record of Dr. Janoff that was available prior to March 28, 2016. The two-year gap about which Plaintiff complains is a result of Plaintiff not seeing Dr. Janoff for two years prior to her alleged disability onset date.

Further, the Court's review of the May 22, 2014 medical record shows that Plaintiff reported experiencing four headaches a month with no relief being on or off Topamax and she had stopped using it two months before, with Plaintiff last seeing Dr. Janoff almost a year prior on August 12, 2013. (R. at 371.) As Plaintiff points out, the ALJ's statement that the May 2014 treatment note showed Plaintiff was responsive to Topamax is not supported by that treatment note. The May 22, 2014 note also relates that Plaintiff reported experiencing relief with ibuprofen, and Imitrex was prescribed on an as-needed basis, which was correctly recited by the ALJ. (Id.)

The ALJ's statement regarding Plaintiff's responsiveness to Topamax based on the May 2014 treatment note is at most a harmless error because the record demonstrates that Topamax did prove effective. The June 3, 2016 treatment note reports that Plaintiff was on Topamax, which was prescribed by her family physician in May 2016. (R. at 368; R. at 568.) As of

March 28, 2018, in support of her disability claim, Plaintiff reported that she currently was taking Topamax. (R. at 258.) The state medical consultants, who opined that Plaintiff was capable of performing light work and to whose opinions the ALJ afforded great weight, also corroborated Plaintiff's medications, which included the use of Topamax. (R. at 18.)

Moreover, although Plaintiff reported she experienced "no relief being on or off Topamax" in May 2014, Plaintiff fails to explain why she resumed taking Topamax as of May 2016, and apparently continued taking Topamax through at least March 2018, if it continued to provide her no relief. The Court therefore finds no error in the ALJ's statement that Plaintiff experienced relief on Topamax, despite the misstatement regarding the May 22, 2014 treatment note. See Ribaudo v. Saul, 2020 WL 5088635, at \*8 (D.N.J. 2020) (finding that the plaintiff had shown, at most, harmless error that did not require remand) (citing Shinseki v. Sanders, 556 U.S. 396, 409-10 (2009) ("[T]he burden of showing that an error is harmful normally falls upon the party attacking the agency's determination.... [T]he party seeking reversal normally must explain why the erroneous ruling caused harm.")); Rutherford, 399 F.3d at 553 (finding that "a remand is not required here because it would not affect the outcome of the case")); see

also Desorte v. Commissioner of Social Security, 2019 WL 1238827, at \*6 (D.N.J. 2019) (citing Richardson, 402 U.S. at 401; Daring, 727 F.2d at 70) ("This Court must review the evidence in its totality, and take into account whatever in the record fairly detracts from its weight. Plaintiff has not provided the Court with specific evidence that detracts from the ALJ's RFC assessment, which the Court finds on its independent review to be reasonable and substantially supported.").

Consequently, Plaintiff's argument that the ALJ erred by failing to fully consider the limitations caused by Plaintiff's migraines and fatigue disorder, as well as the records and opinions of her treating neurologist, is unpersuasive.

### **III. Conclusion**

This Court may not second guess the ALJ's conclusions, and may only determine whether substantial evidence supports the ALJ's determinations. Hartzell v. Astrue, 741 F. Supp. 2d 645, 647 (D.N.J. 2010) (citing Williams v. Sullivan, 970 F.2d 1178, 1182 (3d Cir. 1992)) (explaining that the pinnacle legal principal is that a district court is not empowered to weigh the evidence or substitute its conclusions for those of the ALJ). For the foregoing reasons, the ALJ's determination that Plaintiff was not totally disabled as of March 28, 2016 is

supported by substantial evidence. The decision of the ALJ will therefore be affirmed.

An accompanying Order will be issued.

Date: September 23, 2020  
At Camden, New Jersey

s/ Noel L. Hillman  
NOEL L. HILLMAN, U.S.D.J.